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**In The
Supreme Court of Ohio**

STATE EX REL. OHIOANS FOR FAIR DISTRICTS, et al.,
Relators,

v.

JON HUSTED, OHIO SECRETARY OF STATE,
Respondent.

Original Action in Mandamus

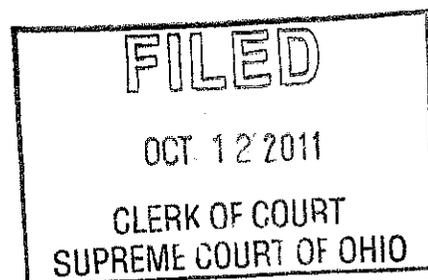
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I. INTRODUCTION

This Court has many times held that the constitutional right of citizens to referendum is of paramount importance. [See, e.g., *State ex rel. General Assembly v. Brunner*, 115 Ohio St.3d 103, 2007 Ohio 4460.] This power applies to every law passed by the Ohio General Assembly, the few exceptions being set forth in the Ohio Constitution. The right of referendum provides an important check on the actions taken by the government; therefore, no governor or legislature has the power to nullify the right by including an appropriation in legislation or by inserting a section making a bare assertion that such legislation is exempt from referendum. This, however, is precisely what has been attempted in the present case.

Lacking the necessary supermajority of support required to pass legislation as an emergency, the General Assembly has appended an appropriation to Substitute House Bill 319, its intent being to attempt to place the legislation out of the reach of the check of the People through the referendum. However, Substitute House Bill 319 amends the permanent law of this state, and is therefore subject to referendum.

For the reasons that follow, Relators have a clear legal right to the requested writ of mandamus.

II. STATEMENT OF FACTS AND CASE

Relator Ohioans for Fair Districts is a ballot issue committee consisting of five individuals designated to represent the petitioners of a

Referendum Petition seeking to refer certain sections of Substitute House Bill 319 (“SHB 319”) of the 129th General Assembly to the voters of Ohio for their approval or rejection (“Referendum Petition”). [Complaint, ¶ 3.] Relators Chris Redfern, Nina Turner, Kathleen Clyde, Matthew Lundy, and Rhine McLin are residents and electors of the State of Ohio. These Relators are members of Ohioans for Fair Districts and are the designated committee representing the petitioners of the Referendum Petition pursuant to Ohio Rev. Code 3519.02. [Complaint, ¶ 4.]

Respondent Jon Husted is the duly elected Ohio Secretary of State and the chief elections officer of the State of Ohio. Under Article III of the Ohio Constitution, the Secretary is a member of the Executive Department of the State of Ohio. Under Ohio Rev. Code 111.08, the Secretary “shall have the charge of and safely keep the laws and resolutions passed by the General Assembly.” [Complaint, ¶ 5.] Pursuant to Chapter 149 of the Ohio Revised Code, the Secretary is required by law to ensure the distribution, compilation, and publication of all laws passed by the General Assembly. This Chapter sets forth the duties of the Secretary to distribute, compile, and publish laws that have been filed with the office. [Complaint, ¶ 6.] The Secretary of State is not vested with any authority to determine the constitutionality of any law. The Secretary’s duties are ministerial. [Complaint, ¶ 7.] The Secretary of State has the ministerial responsibility of determining the timeframe during which referendum petitions challenging

legislation passed by the Ohio General Assembly must be filed with his office under the terms of Section 1c of Article II of the Ohio Constitution. The Secretary of State is responsible for the performance of a number of duties with respect to the referendum process as set forth in Sec. 1g, Art. II, of the Ohio Constitution and Chapter 3519 of the Ohio Revised Code. [Complaint, ¶ 8.]

On September 13, 2011, House Bill 319 was introduced in the Ohio House of Representatives. [Complaint, ¶ 9.] On September 15, 2011, the House State Government & Ethics Committee reported House Bill 319 to the House of Representatives. [Complaint, ¶ 10.] That same day, September 15, 2011, the Ohio House of Representatives voted 56-36 to pass House Bill 319. [Complaint, ¶ 11.]

On September 20, 2011, House Bill 319 was referred to the Ohio Senate Committee on Government Oversight and Reform. [Complaint, ¶ 12.] On September 21, 2011, the Ohio Senate Committee on Government Oversight and Reform reported a substitute bill, Sub.H.B. 319, to the Ohio Senate. [Complaint, ¶ 13.] That same day, September 21, 2011, the Ohio Senate voted 24-7 to pass Sub.H.B. 319. [Complaint, ¶ 14.] That same day, September 21, 2011, the Ohio House of Representatives voted 60-35 to concur in Sub.H.B. 319 as passed by the Senate. [Complaint, ¶ 15.]

On September 26, 2011, Governor John Kasich signed Sub.H.B. 319 (“SHB 319”) into law. [Complaint, ¶ 16.] That same day, September 26, 2011,

Governor John Kasich filed SHB 319 with Ohio Secretary of State Jon Husted. [Complaint, ¶ 17.]

Sections 1 and 2 of SHB 319 repeals and replaces Ohio Rev. Code 3521.01, setting forth the apportionment of the State of Ohio into sixteen (16) congressional districts. [Complaint, ¶ 18.] Further, Section 4 of SHB 319 amends Amended Substitute House Bill 153 of the 129th General Assembly, the biennial budget bill, to appropriate funds which:

“shall be used in a method prescribed by the Secretary of State and transferred by the Director of Budget and management to implement this act, which includes remapping and reprecincting counties, and reprogramming database systems and voting machines. At the end of fiscal year 2012, an amount equal to the unexpended, unencumbered portion of appropriation item 911404, Mandate Assistance, is hereby reapportioned in fiscal year 2013 for the same purpose.”

[Complaint, ¶ 19.] SHB 319 was not passed as an emergency, which would have required the support of two-thirds of the members elected to each branch of the General Assembly [Sec.1d, Art. II, Ohio Constitution.] However, Section 6 of SHB 319 provides:

“It is the intent of the General Assembly that the Congressional districts established by Sections 1 and 2 of this act take immediate effect, to enable the boards of elections to complete their required remapping and reprecincting of this state so that candidates may file their candidacy petitions in the new districts, the boards may properly verify those petitions, the boards may notify electors of their new districts and, if applicable, voting locations, and elections may be conducted in those districts for the 2012 primary election.”

[Complaint, ¶ 20.] Section 7 of SHB 319 provides:

“The sections and items of law contained in this act are not subject to the referendum under the Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore go into immediate effect when this act becomes law”

[Complaint, ¶ 21.]

Relators Redfern, Turner, Clyde, Lundy, and McLin desire to exercise their constitutional right of referendum on the amendments to Ohio’s permanent law, Ohio Rev. Code 3521.01, reapportioning Ohio’s congressional districts and to submit such amendments to the voters of Ohio for their approval or rejection. [Complaint, ¶ 22.] In furtherance of that end, Relators have formed a ballot issue committee, Ohioans for Fair Districts, to collect signatures for the Referendum Petition, as well as to raise and spend funds for the referendum effort.

Relator Ohioans for Fair Districts collected in excess of 1,000 signatures from qualified electors on the statutorily-imposed “summary” petition, and has submitted the “summary” petition to the Secretary of State October 12, 2011 for approval as required by Ohio Rev. Code 3519.01(B). [Relators’ Ex. B.] A complete copy of the summary petition was also tendered to the Attorney General, who refused to accept it for filing. [Relators’ Ex. C.] Relator Ohioans for Fair Districts must obtain approval of the “summary” petition from both the Secretary of State and Attorney General before it can begin collecting signatures for the Referendum Petition as required by Ohio Rev. Code 3519.01(B).

Relator Ohioans for Fair Districts entered an agreement on October 11, 2011 with Professional Petition Management, LLC, (“PPM”) which is a petition signature collection firm based in Columbus, Ohio, that has been in operation since 2008, in order to collect the necessary signatures for the Referendum. [Redfern Affidavit, ¶ 10; James Affidavit, ¶ 6] PPM has collected signatures for other statewide ballot issues including initiatives or referenda for payday lending (2008), sick leave benefits (2008), casinos (2009), and collective bargaining (2011). [Redfern Affidavit, ¶ 11.] PPM has the necessary experience and staffing to collect the required signatures for the Referendum Petition. [Redfern Affidavit, ¶ 12; James Affidavit, ¶ 7.] Relator Ohioans for Fair Districts has formed alliances with additional partners, including the Ohio AFL-CIO and ProgressOhio.org, Inc., that have offered in-kind resources, experience, and staff to collect the required signatures for the Referendum Petition. [Redfern Affidavit, ¶ 13.]

III. ARGUMENT

A. Standard of Review

This Court possess jurisdiction over the subject matter of this action and over Respondent pursuant to Article IV, Sec. 4.02(B) of the Constitution of the State of Ohio and Ohio Rev. Code 2731.02. [Complaint, ¶ 2.]

Relators have acted with the utmost diligence in bringing the instant action the day after the legislation was signed by the Governor and filed with the Secretary of State; there has been no unreasonable delay or lapse of time

in asserting their rights herein and, further, there is no prejudice to Respondent. [See, e.g., *State ex rel Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145, 656 N.E.2d 1277.]

A writ of mandamus will issue where there a clear legal right to the requested relief, a corresponding clear legal duty on the part of the Respondent, and the lack of an adequate remedy in the ordinary course of the law." [*State ex rel. Heffelfinger v. Brunner*, 116 Ohio St.3d 172, 2007 Ohio 5838, 876 N.E.2d 1231, ¶ 13.]

Relators have no adequate remedy at law and relief cannot otherwise be obtained except through this Complaint for a Writ of Mandamus. [See *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶¶15-17 (finding that neither a declaratory judgment, nor prohibitory injunction, would be adequate to compel the Secretary of State to comply with Section 1c, Art. II, of the Ohio Constitution Ohio Rev. Code 3519.01 to treat legislative provisions as being subject to referendum and, also, that a common pleas action would not be sufficiently speedy).]

As for the remaining requirements, Sections 1 and 2 of SHB 319 change the permanent law of the state, Ohio Rev. Code 3521.01, and may not legally take effect until ninety (90) days after SHB 319 is filed with the Secretary of State. Accordingly, and contrary to Section 7 of SHB 319, Relators have a clear legal right to submit Sections 1 and 2 of SHB 319 to Ohio voters for their approval or rejection. Respondent has a clear legal duty

to treat Sections 1 and 2 of SHB 319 as subject to referendum, and thus to refrain from implementing those sections for at least ninety (90) days.

B. The Congressional Apportionment Process

Sections 1 and 2 of SHB 319 change the permanent law of the state, Ohio Rev. Code 3521.01, setting forth new congressional boundaries effective for elections to be held in 2012 based on the 2010 decennial census. While the Ohio Apportionment Board adopts General Assembly districts, Congressional districts are adopted by the General Assembly.

The United States Constitution requires congressional representatives to be apportioned according to the number of persons residing in each state. [Sec. 2, Art. I, U.S. Constitution.] It does not specify how those districts must be apportioned. In Ohio, Congressional the apportionment of congressional districts is enacted by the General Assembly and codified in the permanent law of this state, Ohio Rev. Code 3521.01.

The Federal census determines the population as of April 1, in each year ending with "0." Within one week after the opening of Congress the following year, the President of the United States must report the census counts, and the number of congressional representatives to which each state is entitled, to the Clerk of the United States House of Representatives. Within fifteen (15) days of receiving this information, the Clerk must notify each state Governor of the number of congressional representatives to which the state is entitled. [This process is detailed in 2 U.S.C. §2a.] In accordance

with this schedule, the Governor of Ohio was notified of the state's new apportionment and census figures in January of 2011.

The detailed census reports, which detail the number of individuals residing in each census block, census block group, and census tract, must be released by April 1 of the year after the census is taken. [*Adopting General Assembly and Congressional Districts* (Jul. 15, 2011), Ohio Legislative Service Commission, Vol. 129, Issue 1 – Revised, p.4.] These reports, along with the apportionment determination delivered by the Clerk of the U.S. House of Representatives, form the basis for congressional redistricting. [*Id.*]

There is no statutory deadline for completion of the congressional redistricting process. How early or how late the process is completed depends upon the punctuality of the General Assembly. The filing deadline for nominations for the office of representative to Congress in the year after the census data becomes the practical deadline. Candidates are nominated in the district in which they are seeking election; therefore, the districts must be drawn prior to the filing deadline for the primary election at which the candidates will seek nomination. The General Assembly generally enacts the congressional redistricting plan between April 1 of the year ending in "1" (the year in which the census data is officially released) and the primary election filing deadline for the following year. [*Id.*]

For example, during the prior Ohio apportionment process, the 2000 census data was released in March 2001.¹ The first election to be conducted which would rely on those census figures was the May 7, 2002 primary election. [*Id.*] Following the release of the 2000 census data in 2001, the General Assembly had until the February 21, 2002 filing deadline for the 2002 primary election to enact a congressional districting plan. [*Id.*] The bill enacting those districts was passed by the General Assembly as an emergency measure on January 23, 2002 and became effective on January 24, 2002. [Am. Sub. House Bill 471 (124th General Assembly) (Am.Sub.H.B. 471 receive the necessary supermajority vote required to enact legislation as an emergency, passing the Ohio House of Representatives by a vote of 71-28, and the Ohio Senate by a vote of 22-11 (Am. Sub. H.B. 471 Final Analysis, Ohio Legislative Service Commission, 124th General Assembly)).]

The primary election was moved to May from March as part of Am.Sub.H.B. 194, which was passed by the General Assembly in June, 2011. However, a referendum petition containing more than 300,000 signatures was filed with the Secretary of State on September 29, 2011. The referendum petition seeks to refer the entire bill to the voters for their approval or rejection. That same day, Secretary of State Husted issued Directive 2011-30 directing the boards of elections to report the number of valid signatures contained on the part-petitions no later than November 10, 2011. If the

¹ Available at: <http://www.census.gov/population/www/censusdata/c2kproducts.html>, last visited on October 11, 2011.

referendum petition contains 231,147 valid signatures, Am.Sub.H.B. 194, including the provision moving the primary election from March to May, will be stayed until the voters determine whether or not to enact the measure at the November 2012 general election.

On September 13, 2011, House Bill 318 was introduced in the Ohio House of Representatives. Amended House Bill 318 would make the following changes:

“To amend sections 511.27, 1545.21, 3501.01, 3513.12, and 3513.262 of the Revised Code to eliminate March primary elections in presidential election years by requiring all primary elections to be conducted on the first Tuesday after the first Monday in May, to specify that individuals who have already filed nominating papers for the 2012 primary election prior to the bill's effective date shall be deemed to have filed those papers for the May 8, 2012, primary election, and to specify that a candidate who files for a district whose boundary changes after filing shall be deemed a candidate in the new district that comprises the largest portion of the territory of the district for which the candidate originally filed.”

Am. House Bill 318 passed the Ohio House of Representatives on September 15, 2011 and remains pending before the Ohio Senate Government Oversight & Reform Committee.

Until the referendum petition filed against Am.Sub.H.B. 194 is determined to be valid, a process that will not be completed prior to November 10, 2011 based on Directive 2011-30, it is impossible to know the date upon which the 2012 primary election will be held. If the referendum petition does not contain sufficient signatures, Am.Sub.H.B. 194 will become effective and there will be ample time to conduct a referendum effort prior to

the filing deadline for the 2012 May primary election, which will be February 8, 2012. If the referendum petition does contain sufficient signatures, any crisis of timing will be of the General Assembly's own making, not that of Relators.

Sub. House Bill 319 was filed by the Governor with the Secretary of State on September 26, 2011. As of that date, there already was not sufficient time to conduct a referendum prior to the filing deadline for a March 2012 primary election. If the primary election is held on March 6, 2012, nominating petitions will be due December 7, 2011. The filing deadline for a referendum petition on Sub.H.B. 319 is December 25, 2011. The General Assembly did not have the votes necessary to pass the bill as an emergency, nor did the General Assembly pass the bill early enough to leave sufficient time for the legislation to become effective in the ordinary course, *i.e.*, ninety (90) days following the filing of the bill by the Governor with the Secretary of State. Accordingly, the leadership of the General Assembly has attempted to make an end run around the supermajority requirement for the passage of emergency legislation and/or otherwise purport to make the legislation beyond the reach of referendum so as to leave the People to bear the burden of the General Assembly's failure to either act expeditiously upon receipt of the census numbers or to enact a plan capable of receiving a supermajority of support. Rather, the General Assembly chose to adopt a partisan plan, incapable of receiving a supermajority of support, or any support beyond

members of one party, and have now also attempted to place that plan out of the reach of review by the voters through the referendum process. Any crisis of timing or otherwise which must be confronted as a result rests solely on the leadership who chose not to act expeditiously upon receipt of the census numbers.

C. Sub.H.B. 319 Amends The Permanent Law of This State and is Subject to Referendum

The narrow focus of this case excludes policy considerations, which is the province of the legislative and executive branches, and is singularly centered on whether the citizens of Ohio have the right of referendum on the sections of Sub.H.B. 319 which amend the permanent law of this state.

The constitutional right of referendum is of paramount importance. [*State ex rel. Ohio General Assembly v. Brunner*, 115 Ohio St.3d 103, 2007 Ohio 4460, ¶ 8.] The people's right to the use of the initiative and referendum is one of the most essential safeguards to representative government. [*State ex rel. Nolan v. ClanDening* (1915), 93 Ohio St. 264, 277, 112 N.E. 1029.] The reserved power of referendum applies to every law passed in this state and provides an important check on actions taken by the government. [*Ohio Gen. Assembly*, 2007 Ohio 4460, ¶ 9.] Thus, laws generally do not take effect until 90 days have passed from the date they are filed by the governor with the secretary of state to allow for a possible referendum. [Sec. 1c, Art. II, Ohio Constitution.]

Section 1d, Article II, of the Ohio Constitution sets forth exceptions to the general rule that all laws and sections of laws are subject to referendum and thus do not become immediately effective. In construing that section, this Court has held:

“[t]he plain language of Section 1d, Article II of the Ohio Constitution creates three categories of exceptions from referendum: (1) laws providing for tax levies, (2) appropriations providing for current expenses of the state government and state institutions, and (3) emergency laws necessary for the immediate preservation of the public peace, health, or safety.”

[*LetOhioVote v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶ 26.]

Section 4 of Sub. H.B. 319 amends Section 247.10 of Am.Sub. H.B. 153 of the 129th General Assembly (*i.e.*, the “budget bill”) to provide funds in 2012 and 2013 for the purpose of remapping and reprecincting counties, and reprogramming voting machines. While Ohio Rev. Code 3501.11 delegates to the individual county boards of election the responsibility for the purchase and maintenance of voting devices, even if it is assumed, *arguendo*, that the appropriation contained in Section 4 of Sub.H.B. 319 is for the current expenses of state government and state institutions, that would still not place the sections relating to Ohio Rev. Code 3521.01 beyond the reach of the right of referendum.

In *State ex rel. Riffe v. Brown*, the Court was confronted with a similar fact pattern as in the instant case, where two sections of the legislation altered the substantive law related to voting and election procedures, and a later section provided for the current expenses of the Secretary of State.

[*State ex rel. Riffe v. Brown* (1977), 51 Ohio St.2d 149, 385 N.E.2d 876.] In *Riffe*, this Court held that the entire bill took immediate effect because one part of the bill contained an appropriation for the current expenses of the state government. [*Id.* at 154.]

Subsequently, in *AFL-CIO v. Voinovich*, this Court expressly overruled *Riffe*, holding:

“[a]ny section of law which changes the permanent law of the state is subject to referendum under the powers reserved to the people by Section 1 of Article II, even though the law also contains a section providing for an appropriation for the current expenses of the state government and state institutions which under Section 1d, Article II, becomes immediately effective.”

[*AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 236.]

In response to the *AFL-CIO v. Voinovich* holding, the General Assembly enacted Ohio Rev. Code 1.471, providing:

As used in this section, "appropriation for current expenses" means an appropriation of money for the current expenses of the state government and state institutions as contemplated by Ohio Constitution, Article II, Section 1d.

This section expresses the general assembly's interpretation of *State, ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St.3d 225, 234 to 237, insofar as the case holds with respect to the effective date of sections of law contained in acts that contain an appropriation for current expenses.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if any of the following apply:

- (A) The section is an appropriation for current expenses;
- (B) The section is an earmarking of the whole or part of an appropriation for current expenses; or

(C) Implementation of the section depends upon an appropriation for current expenses that is contained in the act.

The general assembly shall determine which sections go into immediate effect.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses that does not go into immediate effect as contemplated by this section is subject to the referendum and goes into effect as provided in Ohio Constitution, Article II, Section 1c.

[Ohio Rev. Code 1.471.]

In *State ex rel. Taft v. Franklin County Court of Common Pleas*, this Court applied Ohio Rev. Code 1.471 to preclude the opportunity for a referendum “because implementation of the statewide election is dependent upon the appropriation [in a later section of the legislation].” [*State ex rel. Taft v. Franklin County Court of Common Pleas* (1998), 81 Ohio St.3d 480, 484.] That case considered Am.Sub.H.B. 697 (122nd General Assembly), which provided for a sales tax to fund education to be dependent on passage by a majority of Ohio voters. Indeed, Section 2 of that Act expressly provided:

“Section 1 of this act shall take effect only if approved by a majority of the electors voting thereon, as provided in Section 3 of this act, as permitted by Section 26 of Article II, Ohio Constitution, because this act relates to public schools. If Section 1 of this act is not submitted to the electors at a special election on May 5, 1998, or if Section 1 of this act is not approved by a majority of the electors voting on the section at that special election, Sections 1, 2, 3, 4, and 5 of this act expire.”

Section 4 provided an appropriation to the Ballot Board to fund the advertising costs associated with the statewide special election “required by this act.” Nothing in Am.Sub.H.B. 697 changed the permanent law of the

state. Rather, Section 1 set forth provisions of law which would be enacted, if approved by a majority of the voters. Section 2 specified that if not approved by a majority of voters, all of the provisions contained in the Act would expire. Am.Sub.H.B. 697 was defeated by the voters at the May 5, 1998 election. Section 1, enacting provisions of the Revised Code, never took effect; there was no change to the permanent law. Further, to have required a referendum would have been a vain act – the Act itself already conditioned its effectiveness on approval by a majority of the voters. The People of Ohio were already guaranteed a say in the process by the express terms of the Act. Nothing in *State ex rel. Taft* alters or diminishes this Court's holding in *AFL-CIO* that changes to the permanent law of this state are subject to referendum.

In *LetOhioVote*, this Court reaches the same conclusion, distilling everything that has taken place into the axiom applicable herein – the changes made in Sub. H.B. 319 to Ohio Rev. Code 3521.01 constitute permanent changes that will be effective long after the biennium ends and are thus subject to referendum. [*LetOhioVote*, 2009 Ohio 4900, ¶ 47.] That the application of the settled rule, guaranteeing the right of referendum, may leave a messy result or lead to confusion amongst those who may wish to seek election to Congress in 2012 is wholly irrelevant and not a question that has been presented to, nor is ripe for consideration by, this Court. Indeed, the Constitution sets forth three limitations on the right of referendum, and

“Courts are not authorized to add exceptions that are not contained in the express language of these constitutional provisions.” [*LetOhioVote*, 2009 Ohio 4900, ¶ 49.]

When the bill was introduced, it did not contain an appropriation. Nor did it include an appropriation when it passed the House of Representatives. The appropriation first appeared in the substitute version of the legislation, which was reported by the Senate Government Oversight & Reform Committee, passed by the Ohio Senate, and concurred to by the Ohio House of Representatives on a single day, September 21, 2011. As has been widely reported, the appropriation provision was added for the sole purpose of placing this measure beyond the reach of referendum.

This legislation was considered for only three legislative days, and adopted by a bare majority representing a single party. The party lacked to votes necessary to enact the legislation as an emergency and thus advanced a substitute version of the legislation at the eleventh hour which contained a small appropriation which was included solely with the intent to defeat the right of referendum as has been retained by the People in the Ohio Constitution and vindicated by this Court. If a “properly done” or “small appropriation” is all that need be added to legislation to take it out of the reach of the right of referendum, then the right will no longer be of “paramount importance,” nor “a means for direct political participation,” and this case will be the one where the people of the State of Ohio will have lost

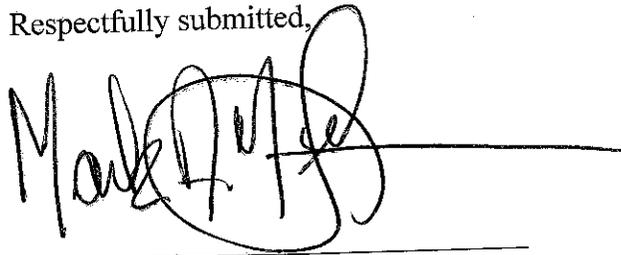
“one of the most essential safeguards to representative government.” [See, LetOhioVote, 2009 Ohio 4900, ¶ 18-20 (citations omitted).] This Court should decline the invitation of the General Assembly to flout the right of referendum in favor of this Court’s own duty to “ensure compliance with the requirements of the Ohio Constitution irrespective of their effect.” [See, LetOhioVote, 2009 Ohio 4900, ¶ 55.]

IV. CONCLUSION

Accordingly, for the reasons set forth above, Relators respectfully request that this Court:

1. Issue a writ of mandamus ordering Respondent Secretary of State to treat Sections 1 and 2 of Substitute House Bill 319 as subject to the constitutional right of referendum by: (i) setting forth in both the paper and electronic journals kept by the Secretary of State that sections 1 and 2 of Substitute House Bill 319 shall not be effective for ninety (90) days of the filing of Substitute House Bill 319 with the Secretary of State by the Governor, and (ii) fulfilling each of the Secretary of State’s duties and obligations imposed by Chapter 149 of the Revised Code with respect to Sections 1 and 2 of Substitute House Bill 319;
2. If the Court issues the requested writ of mandamus, grant an extension of the ninety (90) day period in which to submit the referendum petition on Sections 1 and 2 of Substitute House Bill 319 to the Secretary of State from the date of the decision of this Court in order to allow Relators a meaningful opportunity to circulate a referendum petition [See, *State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St.3d 322, 2009 Ohio 4900, ¶ 54], and;
3. Award Relators their litigation expenses, including reasonable attorney fees and costs, incurred in bringing this action.

Respectfully submitted,



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CERTIFICATE OF SERVICE

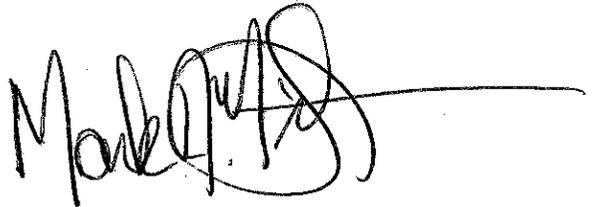
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Case No. 2011-1646

**In The
Supreme Court of Ohio**

STATE EX REL. OHIOANS FOR FAIR DISTRICTS, et al.,
Relators,

v.

JON HUSTED, OHIO SECRETARY OF STATE,
Respondent.

Original Action in Mandamus

CITED CONSTITUTIONAL AND STATUTORY SECTIONS



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ARTICLE II

U.S. Constitution **MAIN PAGE ANNOTATIONS**

SECTION 1.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote: A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or

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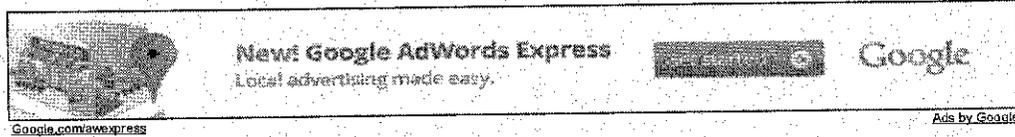
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affirmation:--"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2.

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4.

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

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*** CURRENT THROUGH PL 112-31, APPROVED 9/23/2011 ***

TITLE 2. THE CONGRESS
CHAPTER 1. ELECTION OF SENATORS AND REPRESENTATIVES

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2 USCS § 2a

§ 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duty of clerk

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

HISTORY:

(June 18, 1929, ch 28, § 22, 46 Stat. 26; Apr. 25, 1940, ch 152, §§ 1, 2, 54 Stat. 162; Nov. 15, 1941, ch 470, § 1, 55

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§ 2.01c The referendum
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The second aforesaid power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

(Adopted September 3, 1912. HJR 3; Amended, effective November 4, 2008.)

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§ 2.01d Emergency laws; not subject to referendum
[\[View Article Table of Contents\]](#)

Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

(Adopted September 3, 1912.)

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Current through Legislation passed by the 129th Ohio General Assembly
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*** Annotations current through July 22, 2011 ***

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CONSTRUCTION

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ORC Ann. 1.471 (2011)

§ 1.471. Effective date of provisions of acts containing appropriation for current expenses

As used in this section, "appropriation for current expenses" means an appropriation of money for the current expenses of the state government and state institutions as contemplated by Ohio Constitution, Article II, Section 1d.

This section expresses the general assembly's interpretation of *State, ex rel. Ohio AFL-CIO v. Voinovich (1994), 69 Ohio St.3d 225, 234 to 237*, insofar as the case holds with respect to the effective date of sections of law contained in acts that contain an appropriation for current expenses.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if any of the following apply:

- (A) The section is an appropriation for current expenses;
- (B) The section is an earmarking of the whole or part of an appropriation for current expenses; or
- (C) Implementation of the section depends upon an appropriation for current expenses that is contained in the act.

The general assembly shall determine which sections go into immediate effect.

A codified or uncodified section of law contained in an act that contains an appropriation for current expenses that does not go into immediate effect as contemplated by this section is subject to the referendum and goes into effect as provided in Ohio Constitution, Article II, Section 1c.

HISTORY:

145 v H 790. Eff 9-12-94.